

TITLE 17. TRANSPORTATION

CHAPTER 3. DEPARTMENT OF TRANSPORTATION – HIGHWAYS

ARTICLE 5. HIGHWAY ENCROACHMENTS AND PERMITS

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R17-3-501. Definitions

In this Article, unless otherwise defined, these terms have the following meanings:

“Abutting property” means real property or interest in real property bordering a state highway right-of-way.

“Adopt-a-highway” means a Department program that allows a group of persons access to a state highway right-of-way to conduct litter pickup on a designated portion of the state highway.

“Airspace” means the space above real property.

“Applicant” means a person or entity seeking to obtain an encroachment permit.

“Department” means the Arizona Department of Transportation.

“District Office” means one of the Department’s Engineering and Maintenance district offices.

“Encroachment” means any use of, intrusion upon, or construction of improvement within a state highway right-of-way by any person or entity other than the Department for any purpose, temporary or fixed, other than public travel authorized by state statute.

“Encroachment owner” means the person or entity responsible for creating or maintaining an encroachment on a state highway right-of-way.

“Encroachment permit” means a written approval granted by the Department for construction of a fixed or temporary improvement within a state highway right-of-way, or for any activity requiring the temporary use of or intrusion upon a state highway right-of-way.

“Engineering stationing” means the Department identification system to identify the location of a state highway feature.

“Improvement” means any constructed facility or object, or alteration to any existing physical facility or object, or change in the elevation, slope, or drainage of a state highway right-of-way.

"Permittee" means a person or entity to whom the Department issues an encroachment permit, and who is responsible for meeting the obligations, responsibilities, and specifications stated in the encroachment permit.

"Right-of-way" means the real property or interest in real property on which state transportation facilities and appurtenances to the facilities are constructed or maintained.

"Special event" means any temporary organized or supervised activity that could affect the normal operation of a state highway.

"State highway" has the meaning prescribed in A.R.S. § 28-101(47).

R17-3-502. Applicability

- A. A person or entity shall not encroach on a state highway right-of-way without obtaining an encroachment permit.
- B. Only the following types of encroachments qualify for a Department encroachment permit:
 - 1. Access improvements to abutting properties, consistent with subsection (C)(6);
 - 2. Utility construction and maintenance, including underground and overhead;
 - 3. Drainage improvements;
 - 4. Airspace encroachments, such as overhanging signs, awnings, and banners;
 - 5. Landscaping;
 - 6. Special events;
 - 7. Removing or improving an existing encroachment;
 - 8. Rest area coffee breaks;
 - 9. Change in the principal activity or function of an abutting property where an access or utility encroachment has been constructed;
 - 10. Adopt-a-highway;
 - 11. Activities, such as surveying, performed to compile information about physical features in the highway right-of-way;
 - 12. Traffic control unrelated to the types of encroachments listed above for specific incidents, such as hazardous material removal, accident clean-up, or check points by government enforcement; and
 - 13. For such uses as the Director specifies.
- C. An encroachment not listed under subsection (B) is ineligible to qualify for an encroachment permit and is an unauthorized encroachment. An unauthorized encroachment also includes:
 - 1. Outdoor advertising signs, except as an overhang in subsection (B)(4);
 - 2. Parking areas;
 - 3. Sales of any service or thing;
 - 4. Bicycling, walking, horseback riding, or other activities prohibited under A.R.S. § 28-733;
 - 5. Any commercial or industrial activity; or

6. Access to undeveloped property abutting a state highway, unless the applicant demonstrates a plan for:
 - a. Immediate development of the property evidenced by construction plans or building permits, or
 - b. Continuing maintenance of the undeveloped property.
- D. A new owner of an existing permitted encroachment shall apply for an encroachment permit in the new owner's name within 30 days from the date of purchase of the abutting real property.

R17-3-503. Who Can Apply for an Encroachment Permit

- A. Any person or entity, other than the Department, seeking an encroachment upon a state highway right-of-way shall apply to the Department for an encroachment permit.
- B. Any person or entity is eligible to apply for an encroachment permit, except for an encroachment involving:
 1. Access, only an abutting property owner is eligible to apply.
 2. Landscaping and aesthetic enhancements, only an abutting property owner or a political subdivision is eligible to apply.
 3. Utility installation, only an ultimate owner who will be responsible for maintenance and liability of the utility after it is put into service is eligible to apply. An ultimate owner includes a utility company, improvement district, political subdivision, or abutting property owner. A contractor or developer may apply if the contractor or developer provides evidence that an ultimate owner has approved plans and agrees to obtain an encroachment permit as a new owner upon completion of the utility installation.

R17-3-504. General Application Procedures

- A. An applicant shall obtain an encroachment permit application form from the District Office serving the Department's district in which the proposed encroachment will be located.
- B. An applicant shall include the following information on a District Office's encroachment permit application:
 1. Name, address, city, state, zip code, telephone number, and signature of proposed encroachment owner;
 2. Name, address, city, state, zip code, telephone number, and signature of applicant, if different from proposed encroachment owner;
 3. Applicant's legal relationship to proposed encroachment owner;
 4. City nearest to the proposed encroachment;
 5. Location of proposed encroachment from the nearest milepost (in feet), including state highway route number, side of highway, and engineering stationing (if applicable); and

6. Purpose of proposed encroachment, as listed in R17-3-502(B), and a description of the proposed work or activity in the right-of-way.
- C. By signing an application, an applicant or proposed encroachment owner, or both, agree to accept the following general obligations and responsibilities:
1. Assume all legal liability and financial responsibility for the encroachment activity for the duration of the permit;
 2. Be responsible for any repair or maintenance work to the encroachment for the duration of the permit;
 3. Comply with the Department's traffic control standards;
 4. Obtain written approval from the abutting property owner if the encroachment encroaches on abutting property;
 5. Upon notice from the Department, repair any aspect or condition of the encroachment that causes danger or hazard to the traveling public;
 6. Remove the encroachment and restore the right-of-way to its original or better condition if the Department cancels the encroachment permit, and terminates all rights under the permit;
 7. Reimburse the Department for costs incurred or deposit with the Department money necessary to cover all costs incurred for activities related to the encroachment, such as inspections, restoring the right-of-way to its original or better condition, or removing the encroachment;
 8. Notify a new owner to apply for an encroachment permit, as required by R17-3-502(D);
 9. Apply for a new encroachment permit if the use of the permitted encroachment changes;
 10. Keep a copy of the encroachment permit at the work site or site of encroachment activity;
 11. Construct the encroachment according to plans that the Department approves as part of the final permit;
 12. Obtain required permits from other government agencies or political subdivisions;
 14. Remove any defective materials, or materials that fail to pass the Department's final inspection, and replace with materials the Department specifies.

R17-3-505. Supporting Documentation

An applicant for an encroachment permit shall provide supporting documentation relevant to the type of encroachment activity and necessary to allow the Department to analyze the proposed encroachment's impact on the state highway and right-of-way, using such criteria as:

1. Whether the proposed encroachment is for commercial or residential access;
2. The proposed encroachment's impact on roadway features within the right-of-way;
3. The amount of traffic the proposed encroachment will generate;
4. Duration of the proposed encroachment;

5. The proposed encroachment's potential to disrupt traffic or change traffic patterns;
6. The surrounding terrain and physical features of the right-of-way and the abutting property; and
7. The number, size, and intended use of any buildings that would be accessed via the proposed encroachment.

R17-3-506. Encroachment Permit Requirements

- A. An encroachment permit consists of the materials submitted by an applicant under R17-3-504 and R17-3-505, and additional requirements from the Department as described in subsection (B). An encroachment permit will list in detail the requirements with which the permittee shall comply in order to perform the requested encroaching activity. Some of the requirements are general and apply to every encroachment permit. Others are specific to a particular encroachment activity.
- B. The Department shall set encroachment permit requirements to:
 1. Maintain the integrity of the Department's right-of-way and transportation facilities;
 2. Mitigate the risk to traffic safety;
 3. Improve traffic movement, efficiency, and capacity;
 4. Mitigate adverse drainage on state property or abutting property affecting state property;
 5. Mitigate environmental impacts;
 6. Mitigate maintenance costs to transportation facilities;
 7. Mitigate potential liability for the Department or the state; and
 8. Mitigate potential harms to national or state security.
- C. By accepting an encroachment permit, a permittee agrees to the requirements described in the permit. If the permittee disagrees with the requirements, the permittee shall return the permit immediately to the District Office.

R17-3-507. Review Procedures

- A. The Department shall conduct an administrative completeness review and substantive review of an application for an encroachment permit under A.R.S. §§ 41-1072 through 41-1077 and R17-1-102.
- B. The Department shall decide whether to grant an encroachment permit based solely on the documents and information before the Department.
- C. Decision.
 1. The Department shall approve an encroachment permit if:
 - a. The proposed encroachment use is lawful,
 - b. The applicant provides complete and accurate information,
 - c. The proposed encroachment use qualifies under R17-3-502(B), and

- d. The applicant agrees to comply with the Department's requirements as set out in the permit.
2. The Department shall deny an encroachment permit application if:
 - a. The proposed encroachment use is unlawful,
 - b. The applicant provides incomplete or inaccurate information,
 - c. The proposed encroachment use does not qualify under R17-3-502(B), or
 - d. The permittee disagrees with the requirements in the permit.
3. An applicant may appeal the Department's denial decision on an encroachment permit application as prescribed in R17-3-509.

R17-3-508. Unauthorized Encroachments; Enforcement Actions

- A. An encroachment is unauthorized if:
 1. A permittee fails to comply with the permit requirements,
 2. A permittee provides false or inaccurate information on the encroachment permit application,
 3. A person or entity fails to obtain an encroachment permit, or
 4. The encroachment is unauthorized under R17-3-502(C).
- B. An encroachment owner shall remove any unauthorized encroachment at the owner's own cost.
- C. After considering the totality of the circumstances and in consultation with the Office of the Attorney General, the Department may refer a matter to the Office of the Attorney General according to A.R.S. §§ 28-7053 and 28-7054 for:
 1. Enforcement against the owner of an unauthorized encroachment, or
 2. Recovery of costs from the encroachment owner for the Department removing an unauthorized encroachment if the encroachment owner fails to remove the unauthorized encroachment.

R17-3-509. Hearings

The Department shall inform an applicant or permittee of the hearing procedures when the Department:

1. Denies an application for an encroachment permit, or
2. Determines that an encroachment is unauthorized.